



Ministry of Justice

FAMILY PROCEDURE RULE COMMITTEE
In Conference Room, QB2M
Queen's Building, Royal Courts of Justice
At 11.00 a.m. on Monday 2 March 2020

Present:

Mrs Justice Theis	Acting Chair
Lord Justice Baker	Court of Appeal Judge
Mr Justice Mostyn	High Court Judge
Her Honour Judge Raeside	Circuit Judge
His Honour Judge Godwin	Circuit Judge
District Judge Suh	District Judge
Michael Seath	Justices Clerk
Michael Horton	Barrister
Fiona James	Lay Magistrate
Rob Edwards	Cafcass Cymru
Bill Turner	Lay Member

ANNOUNCEMENTS AND APOLOGIES

- 1.1** Apologies were received from the President of the Family Division, Will Tyler QC, Dylan Jones and Melanie Carew.

MINUTES OF THE LAST MEETING: 3 FEBRUARY 2020

- 2.1** The minutes were approved as a correct and accurate record of the meeting.

ACTIONS LOG

- 3.1** The Acting Chair asked whether the Legal Bloggers consultation had been issued. MoJ Policy confirmed that the consultation was ready to go out pending final sign off from the Committee, which was given. Full discussion at item 10.
- 3.2** In relation to the Costs project, MoJ Policy confirmed that a new Form H has been drafted but required cross checking before being shared with the FPRC Costs Working Group and then the FPRC Forms Working group. The Committee said that it is important that this is finalised before the end of March to enable standard orders to be modified to reflect the new rule and for consideration of training issues and publication times.

Action

- 1. MoJ Policy to send out the Legal Bloggers consultation by the end of the week**

2. MoJ Policy to share the draft Form H and Form H1 with the Costs Working Group by the end of the week.

MATTERS ARISING

CATJAFS: Further consideration of functions of authorised persons

- 4.1** The Working Group confirmed that they will convene directly after this meeting to discuss the contentious functions of Legal Advisors as raised in the consultation responses, and identify the work that will need to be undertaken on these functions. The Legal Advisers identified at the previous meeting have now become members of the CATJAFS Working Group.

ACTION

Agenda item for April.

Forced Marriage and FGM Protection Order Mailbox

- 4.2** MoJ Policy confirmed that following a useful meeting with the Police in the previous week, a positive way forward has been proposed. The team will update the committee in May.

ACTION

Agenda item in May.

Allocation of Cases: Parents without parental responsibility

- 4.3** MoJ Policy are continuing to work with HMCTS looking at case volumes and will discuss with the President of the Family Division in the first instance and return to the Committee in April.

ACTION

MoJ Policy to provide a paper on the allocation issue, to be discussed at the April meeting.

Costs update: Calderbank Offers

- 4.4** The Costs Working Group confirmed that the consultation had received a considerable number of responses which still needed more time to consider and analyse. The Working Group are due to meet in April and will update the Committee in May. The Costs Working Group also raised the need to understand what impact a re-introduction of Calderbank offers would have on judicial resources and time.

ACTION

MoJ Policy to report back in May following input from the working group.

MINISTERIAL PRIORITIES AND FAMILY JUSTICE UPDATES

- 5.1** The Deputy Director of MoJ's Family Policy Team fed back on recent discussions with the Secretary of State on family justice.

- 5.3** MoJ also updated Members on the Divorce Bill which is at Committee stage in the House of Lords. A further update will be provided at the April FPRC.
- 5.4** Finally, there is a commitment that the Domestic Abuse Bill will be introduced in Parliament. Further updates will be given on this as the Bill progresses.

ACTION

MoJ Policy to return to the April FPRC meeting with more detail on the Divorce Bill.

PUBLIC AND PRIVATE LAW WORKING GROUPS

- 6.1** The Acting Chair updated the Committee on the progress of the public and private law working groups. The private law working group is likely to await the report of the Harm Panel before it produces its final report. The next meeting of the Implementation Group will be in mid-March.

CONTEMPT

- 7.1** The Acting Chair presented an update on the Civil Procedure Rule Committee project relating to contempt. The CPRC are due to undertake a consultation by the end of March to look at simplification of Part 81 of the Civil Procedure Rules and that the Family Procedure Rule Committee stakeholder list will be included within that exercise.
- 7.2** The Committee agreed they were keen to reflect whatever changes are made to the civil rules and agreed to set up a small working group to work through what might be needed for family cases.
- 7.3** The make-up of the working group was agreed consisting of Committee Members, MoJ officials and a member from the Civil Procedure Rule Committee working group.

ACTION

- a. The FPRC working group to convene in the week beginning 16 March.**

DEED POLL NAME CHANGES

- 8.1** MoJ updated the committee on initial discussions in the CPRC and subsequently in a small working group established by the CPRC. The working group had identified a number of wider issues going beyond the initial issue of transferring responsibility for dealing with applications for name change for children to the Family Division and/or family court, and had concluded that rather more thoroughgoing review of the 1994 Regulations was required, potentially involving a need for some consultation.
- 8.2** The Committee agreed for a member to join as the family liaison.
- 8.3** The lay member said that it would be useful to have a sense of volume of transgender children going through the Deed Poll process. MoJ Civil Policy said that exact numbers are

unknown but there were thought to be 1800 cases globally with around half of them related to children.

ACTION

- 1. MoJ Civil Policy to ensure that their working group is aware of FPRC representation on the Civil Procedure Rule Committee Working Group.**
- 2. To return for update or as an agenda item in May.**

TOXICOLOGY IMPACT ASSESSMENT

- 9.1** MoJ Policy updated the Committee on the work undertaken to complete an impact assessment in relation to the proposed PD25G. The question being how the proposed changes could affect the industry and the court process in regard to narrowing the supply of available providers once changes are brought in to regulate the sector. It was confirmed that no significant impact nor cost increase on members of the public was expected.
- 9.2** Committee Members wanted assurances that there will be adequate numbers of providers and whether those who have not come to the fore will be included. Regional variation concerns were raised, as per the interpreter register, but it was concluded this is not relevant as parties need only go to their local GP to give a sample.
- 9.3** The committee discussed whether provision for permission in exceptional circumstances be added to paragraph 3 to cover the possibility of testing being commissioned from a provider which was in the process of being accredited and would have completed the process by the time the testing would be undertaken, although it was noted that this would delay the timetable. Members agreed this could not be justified and rather than include an exceptional circumstances point, that this proposal be reviewed in 12 months. This will then also provide a basis to consider whether there have been any delays as a result in building toxicology testing into the process.
- 9.4** Committee Members agreed to proceed as recommended.

LEGAL BLOGGERS IN FHDRAs

- 10.1** MoJ Policy updated the Committee following the point raised at the February meeting to the request from the Transparency Project for legal bloggers to attend FHDRA's under the current pilot process. The Committee also discussed the recent Pink Tape blog (25 Feb) concerning attendance at three DRAs in Oxford.
- 10.2** Committee Members unanimously agreed that FHDRA's usually involve judicially led conciliation and so would be within the exception in r27.11(1)(a), such that attendance by legal bloggers (under the pilot) and media representatives (under the rules) would not be permitted.

LEGAL BLOGGERS: CONSULTATION

- 10.3** Committee Members discussed the planned consultation and that the circulation list should be increased to journalists and those who participate as litigants. The Legal Secretary to the President of the Family Division said that she would look at inclusion of suggested bodies including the Law Society Gazette; Family Rights Group; Court Reporters and the Society of Editors. The Legal Secretary to the President of the Family Division said that she would also find a contact within the Press Association.

ACTION

MoJ Policy to send out the consultation by the end of the week (6 March 2020) when additional names to send the consultation to have been identified.

PRACTICE DIRECTIONS FOR FINAL DISCUSSION

a) PD5C: Correspondence with the Court

- 11.1** MoJ Legal said that the draft had been amended to reflect the views of the Committee at the last meeting and to refer to the specific types of proceedings under the Adoption and Children Act 2002 identified by the Judiciary after the last meeting.
- 11.2** The Committee asked whether consideration had been given to translations of correspondence to ensure that all concerned have access to read them. It was agreed that this was not a matter for the Practice Direction, but HMCTS would look into it.
- 11.3** It was agreed that the Practice Direction should include provision to require those sending correspondence to the court to expressly state whether they were relying on an exemption from the requirement to copy correspondence and, if so, why.
- 11.4** HMCTS confirmed that standard wording was being drafted to include in first directions/ correspondence so parties are clear about the requirement to copy correspondence.
- 11.5** Subject to the addition of the new provision discussed, it was agreed that PD5C could be submitted to the President for signing.

b) PD41A: proceeding by electronic means: divorce

- 11.6** MoJ Legal said that the changes highlighted in the paper were mainly for HMCTS and were not substantive
- 11.7** The Committee asked whether the wording around Statements of Truth was the same in new PD41A and new PD41B. MoJ Legal confirmed that it was. The Committee also asked the Welsh Language position had been looked at and asked for assurances that changes as a result of the Divorce Reform will be taken into account
- 11.8** The Committee agreed that MoJ could make final changes to PD41A to reflect HMCTS comments and then submit it to the President for signing.

c) PD41B: proceeding by electronic means: consent financial remedy

- 11.9** MoJ Legal spoke to the recast document which had been amended in light of comments received. The Committee asked why consent variation applications and Schedule 1 Children Act 1989 consent applications are excluded. MoJ Legal said that this reflected how the system was built but would require clarification with HMCTS colleagues outside of this meeting to see whether they have any intentions to include them moving forward.
- 11.10** The Acting Chair asked whether there is any intention to enable litigants in person to access the online system. It was agreed that if HMCTS confirmed that there were no plans on the firm horizon to add the cases referred to by the Committee to the online system, then MoJ should proceed to invite the President to sign PD41B, once amended to reflect final comments from HMCTS. It was agreed that the section on statements of truth being given by people unable to read a document should be retained, although it was unlikely to apply in practice.
- 11.11** The Committee said that if the online consent financial remedy scheme is to be expanded then the judiciary would also like consideration of a dedicated helpdesk; of how Judges are trained; and a move from a “push” method to a “pull” method for judges to deal with cases.
- 11.12** MoJ Legal also asked whether the Statement of Truth information at para 9.3 should remain.

MAGISTRATES’ WRITTEN REASONS FOR DECISIONS

- 12.1** The Legal Secretary to the President of the Family Division referred to the issue discussed in November and updated the Committee on the Magistrates’ Association’s views on the need for written reasons to be provided. It was recognised that these take time to prepare, but they can cover Judicial continuity; accountability; views given on recordings/transcripts; final or contested decisions and examples of current practice amongst a range of issues. The Committee agreed that written reasons are important. The Legal Secretary to the President of the Family Division said that it will therefore be necessary to respond to the query raised by a legal adviser at Plymouth Magistrates Court about the ongoing need for written reasons to be prepared.
- 12.2** The Committee agreed to write to Plymouth Magistrates’ Court and for that to close this item as a discussion point at the Committee.

ACTION

The President of the Family Division’s office to write to Plymouth Magistrates’ Court

PENSION SHARING ORDERS

- 13.1** The Committee discussed a case where the court failed to serve a pension sharing order (PSO) on the pension scheme Trustees, the scheme member withdrew the funds and the

MoJ had to compensate the disappointed beneficiary. FPR 9.36(5) requires the court to serve a pension provider with the PSO within 7 days of the making of the PSO or pronouncement of Decree Absolute (DA). The Committee were asked to consider whether service by the court in this way remains appropriate or whether provision should be made for the party benefiting from the PSO to serve the Trustees. It was noted that the court could make an injunction at the same time as making the PSO, so the pension could not be drawn. It was recognised that this may need a revisiting of the rules.

- 13.2** The Committee discussed whether this could be handled within guidance, although this could carry some risks in securing lump sums before PSOs take effect. It was proposed that conversations with the Pension Trustees and the Pension Industry should take place before making any rule amendments.
- 13.3** The Acting Chair thought that this should be updated in April and that the Pension Advisory Group should be emailed with the covering paper to get their views.

ACTION

FPRC Secretariat to send paper to the Pension Advisory Group.

CIVIL PROCEDURE RULE COMMITTEE AND FAMILY PROCEDURE RULE COMMITTEE LINK

- 14.1** MoJ Policy confirmed that there was nothing substantive to add, subject to the discussion under any other business relating to witness statements and statements of truth.

STAKEHOLDER LIST

- 15.1** It was agreed that the Local Government Association and the British Association of Social Workers be added to the list.

ACTION

The FPRC Secretariat to update and send out for further consideration

PRIORITIES OF THE FAMILY PROCEDURE RULE COMMITTEE

- 16.1** Committee Members asked whether the status of work of the 'Voice of the Child' working group will need further consideration and suggested that the views of the President of the Family Division be sought to update further.

APRIL 2020 AGENDA

- 17.1** The Acting Chair asked that issues discussed at this meeting be reflected on a revised version of the agenda including discussion around CPR changes on witness statements and statements of truth.

ANY OTHER BUSINESS

- 18.1** The Committee noted that CPR PD32 (witness statements) and CPR PD22 (statements of truth) have recently been amended. The Committee noted that it would be unfortunate to have different requirements in the FPR and the CPR. It was noted that any changes to the FPR requirements on statements of truth could impact on many standard forms.

ACTION

To return in April as a full agenda item to discuss whether the FPR should be amended to reflect the CPR changes.

- 18.2** The Acting Chair said that there is a planned temporary solution to provide judicial cover to deal with applications for the registration of foreign orders by DJ PRFD, and that there will be an agenda item on this matter in April.
- 18.3** The Acting Chair said that she had been contacted by one DFJ who raised the issue that there had been an increase in appeals from lay magistrates sitting in the family court. The DJF had asked whether a permission filter should be added before an appeal from such a decision can be made. It was agreed that there should be discussion in April about what the options for reform could be.

ACTION

To be included as a full agenda item in April

- 18.4** The Acting Chair said that the adverts for the DJ and the DJ (MC) roles to the FPRC have gone live.
- 18.5** MoJ Legal noted that the President had recently signed a new pilot PD which will enable applications in placement proceedings to be uploaded to an online system.

DATE OF NEXT MEETING

- 19.1** The next meeting will be held on Monday 6 April at 11.00am at the Royal Courts of Justice.

Simon Qasim – Secretariat
March 2020
simon.qasim3@justice.gov.uk